IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5138 of 2001

WITH

SPECIAL CIVIL APPLICATION NO. 5280 OF 2001

AMD

SPECIAL CIVIL APPLICATION NO.5282 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHASHIKANT MAGANLAL MEHTA JR.CLERK CITY GUEST HOUSE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5138 of 2001
MR MURALI N DEVNANI for Petitioner No. 1
Ms. Harsha Devani, AGP for Respondent No. 1

2. Special Civil Application no.5280 of 2001
Mr. Murali N. Devnani for petitioner.
Ms. S.D. Vyas, AGP for the respondent no.1.

3. Special Civil Application no.5282 of 2001
Mr. Murali N. Devnani for petitioner.

Ms. S.D. Vyas, AGP for respondent no.1.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2002

ORAL JUDGEMENT

Rule in each of these petitions returnable today. The learned AGPs in the respective petitions waive service of rule on behalf of the respondents.

With the consent of the parties, these matters are disposed of finally today. Since the point involved in these petitions is common, they are disposed of by this common judgment.

1. So far as the petitioner of Spl.C.A. no.5138 of 2001 is concerned, she was appointed as Workcharge Telephone Operator by order dated 12th March, 1980 in the payscale of Rs.260-400 by the respondent authority. Subsequently, the petitioner was appointed on the vacant post of temporary Telephone Clerk in the same payscale. The said order giving regular appointment to the petitioner was passed on 24-2-1983. Subsequently, the petitioner was also granted benefit of higher payscale on the basis of completion of 9 years service as per Government Resolution , popularly known as 9/18/27 years. The petitioner was given benefit of the first higher payscale of Rs.1400-2300 by an order dated 10/11th May, 1984 with effect from 29-2-1992. Further, by another order dated 4th December, 2000, the payscale given to the petitioner was reduced to Rs.1200-2040. The said order is annexed at page 13 Annexure "A". The petitioner has challenged the said action by which his payscale is reduced, on various grounds. It is also required to be noted that on the basis of the aforesaid reduction in the payscale, the petitioner was subjected to recovery of the excess amount which was given on the basis of wrong fixation in the payscale of Rs.1400-2300.

2. So far as Special C.A. no.5280/01 is concerned, the petitioner of this petition was appointed as Junior Clerk by an order dated 2nd June, 1982. He was granted benefit of higher payscale on the basis of completion of nine years of service and an order to that effect was passed on 30th March, 1995. The aforesaid benefit was extended in favour of the petitioner with effect from 7th August, 1981 vide order dated 30th March, 1995. However, by an order dated 2nd December, 2000, the benefit of higher payscale of Rs.1400-2300 was reduced to that of

Rs.1200-2040. On the basis of the same, the consequent order of recovery is also passed against the petitioner. The petitioner has, therefore, challenged the aforesaid action of the respondent-authority by filing this petition.

3. So far as Special C.A. no.5282/2001 is concerned, the petitioner of this petition was appointed as Telephone Operator by an order dated 9th May, 1980. After completing probation, he was appointed as a regular employee. The petitioner thereafter was granted benefit of higher payscale of Rs.1400-2300 on completion of nine years of service. Subsequently, by another order dated 4th December,2000, the said scale was reduced to Rs.1200-2040 and consequent order of recovery was passed on the basis of wrong fixation granted earlier. The petitioner has challenged the aforesaid action of the respondent-authority by filing this petition.

4. On behalf of the petitioners, it is argued by the learned Advocate Mr. Devnani that the aforesaid order by which the payscale of the petitioners is reduced is passed without hearing them. It is submitted that, in any case, before effecting any recovery, the petitioners were required to be heard. Mr. Devnani has also submitted that, in any case, even if the scale was fixed by mistake, then also, no recovery can be effected under the provisions of the Bombay Civil Services Rules. As against that, it was submitted by the learned A.G.P Ms. Devani as well as by Ms. Vyas that by mistake wrong benefit of fixation was given to the petitioner, and therefore, correct decision is taken in giving the appropriate scale to the petitioner which they are entitled to do. It is submitted that the mistake can be rectified by the Department at any point of time.

5. After considering the rival contentions of the parties, I am of the opinion, that before taking any decision which may have the effect of taking away certain benefits, such person who would be affected is required to be heard. Any decision which may have civil consequences is required to be taken only after hearing the concerned party who is likely to be affected by such decision. In these matters, the paycale of the petitioners is reduced without giving them any opportunity of being heard. Even consequential orders of recovery are also passed without giving them opportunity of being heard. In that view of the matter, without expressing any opinion on the merits of these petitions, they are required to be allowed only on a short point of

violation of principles of natural justice as the impugned orders are passed without hearing the concerned petitioners. Accordingly, the impugned orders are required to be quashed and set aside with a liberty to the respondent-authority to pass fresh orders again after hearing the petitioners. It is clarified that this Court has not expressed any opinion on the merits of the issue. It is for the respondent-authority to pass fresh order after giving an opportunity of hearing to the petitioners.

6. In the result, all these petitions are allowed. The impugned orders are hereby ordered to be quashed and set aside. It will be open for the respondent-authority to pass appropriate orders after hearing the petitioners. It is also clarified that if the decision is taken against the petitioners,it will be open for the petitioners to challenge the same in accordance with law. Rule is made absolute to the aforesaid extent only with no order as to costs.

(P.B. Majmudar,J.)

stanley-pbm.